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March 30, 2023

Hon. Judge Brenda K. Sannes  
Chief U.S. District Judge  
Northern District of New York  
P.O. Box 7336  
Syracuse, NY 13261

Re: *NYSRPA, et. al. v. Bruen, et al.*, No. 1:18-cv-134 (BKS/ATB)

Dear Chief Judge Sannes:

This letter is written to advise the Court of a relevant decision on attorneys' fees issued a couple days ago by the United States Court of Appeals for the Second Circuit, *Agudath Israel of Am. v. Hochul*, No. 22-38, 2023 WL 2637344 (2d Cir. Mar. 28, 2023) (summary order), which also deals with a fee application in connection with a successful litigation to the Supreme Court.

In *Agudath*, the District Court set the reasonable hourly rate for even specialist Supreme Court counsel at between \$500 and \$600, the top end of the typical rates for civil rights attorneys in the Eastern District of New York. *See Agudath Israel of Am. v. Hochul*, No. 20-cv-4834, 2021 WL 5771841, at \*5 (E.D.N.Y. Dec. 6, 2021) (discussing \$600 as the highest rate awarded in the district for specialty counsel); *id.* at \*8-9 (awarding between \$500-600 for specialist Supreme Court practitioners). The District Court also reduced the award based on other improper billing practices, such as duplicative work, and charging lawyer rates for work properly done by paralegals. *See id.* at \*10-11.

Plaintiffs' counsel appealed to demand more compensation, but the Second Circuit affirmed, finding that "the district court did not abuse its discretion in setting reasonable hourly rates for Plaintiffs' counsel and refusing to apply an additional fee enhancement for case-specific reasons." *Agudath*, 2023 WL 2637344, at \*3. Among the central points made by the Circuit were that:

(1) The rates should generally be the prevailing market rates for the district in which the action was brought. *Id.*

(2) "[T]he novelty and complexity of a case generally may not be used as a ground for enhancement [of billing rates] because these factors presumably [are] fully reflected in the

number of billable hours recorded by counsel.” *Id.* (quoting *Perdue v. Kenny A. ex. rel. Winn*, 559 U.S. 542, 553 (2010)).

(3) The reasonable fee should be calculated first, with any adjustments done “only after this initial calculation.” *Id.*

(4) The appropriate way to reflect the importance of a case, is by awarding rates at the “highest” or “upper end” of the prevailing market rates in the District. *Id.*

(5) Finally, it is appropriate to consider “the reputational benefits that might accrue [to counsel] from being associated with the case.” *Id.* (quoting *Arbor Hill Concerned Citizens Neighborhood Ass’n v. County of Albany*, 522 F.3d 182, 190 (2d Cir. 2008)).

Although the Second Circuit’s decision in *Agudath* is a summary order and therefore not binding precedent, “[s]ummary orders are ‘deemed some indication of how the Court of Appeals might rule were it to decide the issue in a binding opinion’ and have ‘persuasive value.’” *Goldstein, Altschuler, Nahins & Goidel, P.C. v. Cont’l Cas. Co.*, No. 22-cv-1788, 2023 WL 2051353, at \*7 (S.D.N.Y. Feb. 16, 2023) (quoting *Mendez v. Starwood Hotels & Resorts Worldwide, Inc.*, 746 F. Supp. 2d 575, 595 (S.D.N.Y. 2010) and *United States v. Gordon*, 2020 WL 529301, at \*3 (S.D.N.Y. Feb. 3, 2020)). In keeping with the Circuit’s holding in *Agudath*, the hourly rate awarded should be no higher than the highest prevailing rate for civil rights work in this District, which is “between \$250 and \$350 for partners.” *Grant v. Lockett*, 605 F. Supp. 3d 399, 404-05 (N.D.N.Y. 2022); *accord Moore v. Keller*, No. 16-CV-1230, 2021 WL 5493022, at \*2 (N.D.N.Y. Nov. 22, 2021) (“the prevailing rate for an experienced partner in the Northern District clocks in slightly lower, at \$350 per hour”).

Thank you kindly for your consideration of this matter.

Respectfully yours,

s/ *Michael McCartin*

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cc: All counsel of record (via e-filing)